93-364

IN THE
# Supreme Court of the United States
October Term, 1992

MARSHALL LEE FRAZIER, JR.,
*Petitioner,*

*v.*

STATE OF TEXAS,
*Respondent*

**Petition For Writ Of Certiorari To The Court Of Criminal Appeals Of The State Of Texas**

## PETITION FOR WRIT OF CERTIORARI

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38 pp

# QUESTIONS PRESENTED

DOES IT VIOLATE A CRIMINAL DEFENDANT'S SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL IF THE PROSECUTION DOES NOT FULLY OPEN ON THE QUESTION OF GUILT IN THE ARGUMENT TO THE JURY?

DOES IT VIOLATE A CRIMINAL DEFENDANT'S SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL IF THE PROSECUTION WAIVES OPENING AND RESERVES CLOSING ON THE QUESTION OF PUNISHMENT IN THE ARGUMENT TO THE JURY?

DOES THE FAILURE OF THE PROSECUTION TO FULLY OPEN ON BOTH GUILT AND PUNISHMENT DENY A CRIMINAL DEFENDANT DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENT AND THEREBY VIOLATE THE DEFENDANT'S RIGHT TO THE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

## PARTIES

Petitioner-Appellant is Marshall Lee Frazier, Jr..
Respondent-Appellee is the State of Texas.

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NO. _____

IN THE

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MARSHALL LEE FRAZIER, JR.,
*Petitioner*,

v.

STATE OF TEXAS,
*Respondent*.

**Petition For Writ Of Certiorari To The Court Of Criminal Appeals Of The State Of Texas**

## PETITION FOR WRIT OF CERTIORARI

To The Honorable Chief Justice of the United States, and to the Associate Justices of the United States Supreme Court:

Petitioner, Marshall Lee Frazier, Jr. ( hereinafter "Petitioner") respectfully prays that a Writ of Certiorari issue to review the decision of the Court of Criminal Appeals of the State of Texas, which declined to review the decision of the First Court of Appeals of Texas affirming Petitioner's conviction for the offense of resisting arrest.

## REPORTS OF OPINIONS

The order of the Texas Court of Criminal Appeals refusing Petitioner's Petition for Discretionary Review is not a reported order and is set forth at Appendix A. The opinion of the First Court of Appeals is not a reported decision and is set for at Appendix B. The judgment of the Trial Court is not a reported decision and is set forth at Appendix C.

## JURISDICTION

The decision sought to be reviewed herein was entered by the Texas Court of Criminal Appeals on June 15, 1993.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257.

## STATUTES INVOLVED

The following statute is involved in this case: Article 36.07, Texas Code of Criminal Procedure. This is set forth in Appendix I.

The following Constitutional provisions are involved in this case: Fifth, Sixth and Fourteenth Amendments to the United States Constitution. These are set forth in Appendices F - H.

## STATEMENT OF THE CASE

This case involves the denial of Petitioner's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution and the abrogation of Petitioner's Sixth Amendment right to the effective assistance of counsel by the deliberate trial tactics of the Harris County, Texas District Attorney.

Petitioner was charged with the misdemeanor offense of resisting arrest, for which he faced a maximum potential punishment of one year in jail and/or a $2,000 fine if convicted. Petitioner elected to have a jury determine both the question of guilt and the punishment to be assessed.

The District Attorney refused, over Petitioner's counsel's objection, to fully open on the issue of Petitioner's guilt. This portion of the Statement of Facts is set forth in Appendix D. Petitioner was convicted by the jury. The District Attorney, over Petitioner's counsel's objection, waived opening on the issue of Petitioner's punishment. Petitioner's counsel then refused to argue on the issue of punishment and objected to the District Attorney being allowed to "rebut" Petitioner's non-existent argument on punishment. This portion of the Statement of Facts is set forth in Appendix E.

The jury assessed punishment at $1,500, fully probated. This verdict is reflected in the judgment of the trial court and is set for in Appendix C.

Petitioner appealed the decision of the trial court to the First Court of Appeals for the State of Texas, at Houston, which affirmed the action of the trial court. Petitioner filed his Petition for Discretionary Review with the Texas Court of Criminal Appeals, which refused the application.

## ARGUMENT

**Reasons for granting the Writ.**

This case is ripe for Supreme Court review to resolve the important constitutional issue presented by the facts hereof. The constitutional framework has a substantial impact on a criminal defendant's right to due process and the effective assistance of counsel during all phases of a criminal trial. This Court has yet to rule on the issues presented by this case, and its guidance is required to resolve a difficult constitutional question which has a direct and meaningful impact on potentially every criminal case tried to a jury in this country.

**Statutory framework.**

Article 36.07, Texas Code of Criminal Procedure, governs the order of argument in criminal cases in Texas. The Texas Court of Criminal Appeals has previously interpreted this statute as giving the trial court the discretion to allow the State to not fully open its jury argument. *Granato v. State*, 493 S.W.2d 822, 826 (Tex. Crim. App. - 1973). As shown hereunder, that interpretation is repugnant to the Sixth Amendment rights of criminal defendants.

**Constitutional framework.**

The Fifth and Fourteenth Amendments to the United States Constitution prohibit the State from depriving Petitioner of his liberty without due process of law.

The Sixth Amendment to the United States Constitution guarantees Petitioner the right to have the assistance of counsel for his defense.

**Violation of Due Process and Sixth Amendment Rights.**

In the trial of the case hereunder, the State's prosecutor failed or refused to fully open on guilt and waived opening on punishment. Petitioner objected on both occasions to the State's tactics and requested the Trial Court to require the State to fully open. Petitioner's objections and requests to have the State's prosecutor fully open were denied by the Trial Court. The State's failure to fully open had the effect of denying Petitioner his right to Due Process and the effective assistance of counsel, under the Fifth, Fourteenth and Sixth Amendments to the United States Constitution.

It is settled law that the defendant's right to argue implicates Sixth Amendment rights.

> The prosecutor and the defense counsel in turn must be afforded a full opportunity to advance their competing interpretations, and to emphasize the principles of law that favor their respective positions. [5] fn. 5. The defendant's right to present argument is part of his Sixth Amendment right to counsel and to jury trial.

*United States v. Sawyer*, 443 F.2d 712, 713 (D.C. Cir. 1971).

The issues raised by the State's waiver of opening argument or by the presentation of a "skeleton" opening in a criminal case have been addressed by the Supreme Courts of several states and at least one Federal Court, all of whom have found procedures - similar to that used by the State in its arguments in this case - repugnant to the constitution and to the rights of the defendant.

The general rule governing the argument of a case to a jury is a simple one:

> [C]ounsel having the affirmative (usually the plaintiff) should develop in his opening statement the points and matters which he wishes to present. The defendant may answer such argument and develop all the points he considers of importance. Then the plaintiff in closing may reply to and counter any argument the defendant has made. The closing argument should be in the nature of a rebuttal. The plaintiff should not conceal or

> "sandbag" by wholly omitting from argument a salient point or feature of the case and then (if it not argued by defendant ...) make a closing argument on that feature.

*Misch v. C.B. Contracting Company*, Mo. App., 394 S.W.2d 98, 102 (1965).

> For a time, courts were adamant in confining the scope of a plaintiff's rebuttal strictly to a response to points raised in defense counsel's closing summation. See *Shaw v. Terminal R.R. Ass'n*, Mo. Supr., 344 S.W.2d 32 (1961); *Johnson v. State*, Wis. Supr., 192 Wis. 22, 211 N.W. 668 (1927). **The rule is rooted in the concepts of due process and fundamental fairness. Simply put, it is unfair and often highly prejudicial for** plaintiff's or **State's counsel to avoid treatment of certain issues in the opening summation so as to deprive defense counsel of the opportunity to reply.**

*Bailey v. State*, 440 A.2d 997, 1002 (Del. Supr. 1982) [Bold Emphasis Supplied].

> * * * we think that open waiver of closing argument by the government in a criminal case is of dubious propriety and may be done in such a manner as to work prejudice to a defendant.

*United States v. Barnes*, 313 F.2d 325, 328 (6th Cir. 1963).

> * * * In a criminal case the opening argument is intended to permit a statement of the case and of the law and the evidence and to uphold the right to a conviction. The argument for the defendant permits an **answer to the plaintiff on the law and the facts and the presentation of the defense, in which counsel contends against the position of the plaintiff and assumes others of his own. The people in the closing argument are entitled only to reply to the arguments of the defendant and cannot introduce any new line of argument**, and a single closing argument being purely in reply and not introducing new matter, is entirely sufficient for the purpose of the prosecution.

*People v. Bundy*, 129 N.E. 189, 192 (Supr. Ill. 1920) [Bold Emphasis Supplied].

> Counsel for the defendant excepted on the ground that by this statement the acting solicitor "had failed to outline to the jury in the proper form of argument the contentions of the State, he having the concluding argument, so that the defendant may have full opportunity through his counsel to reply to such arguments as may be made. * * *
>
> It must be admitted, however, that the so-called "opening argument" of the prosecuting attorney was not an argument at all, but was little more than an outline of the charge made in the indictment, together with the statement that the evidence submitted proved every material allegation thereof, and

> that he would on that evidence ask the jury to find the defendant guilty as charged.* * *
>
> **The purpose of allowing the attorney on whom the burden lies to open and conclude is that in his opening address he shall fairly state his case - the particular evidence, and the law upon which he relies - so that the opposite attorney may have an opportunity to discuss his position.** * * * Of course, no court can regulate with perfect exactness what a lawyer shall say in his opening address; but, **if he refuses to fairly open his case, he should not be permitted to reply to his adversary**; * * *

*Andrews v. State*, 129 So. 771, 772 - 73 (Supr. Fla. 1930) [Bold Emphasis Supplied].

By using the trial tactic of failing to fully open on guilt and waiving opening on punishment, the State's prosecutor effectively denied Petitioner's counsel the opportunity - in his argument - to rebut the evidence that the State intended to rely upon to establish its case against Petitioner. This is a complete perversion of the State's burden of going forward with proof in a criminal case and an effective emasculation of defense counsel's ability to effectively assist his client by preventing him from responding to each point relied upon by the prosecutor to prove the State's case. The proper reach of the Sixth Amendment right to the assistance of counsel would require that the State, in its closing argument, be entitled only to reply to the arguments of the Defendant and no to introduce any new line of argument, as was done in this case. Further, the proper reach of the Sixth Amendment right to the assistance of counsel mandates that if the State refuses to fairly open its case, it should not be permitted to reply to the

Defendant. Only this will prevent the sort of sandbagging perpetrated by the State's prosecutor and the accompanying abuse of the Defendant's Due Process and Sixth Amendment rights herein.

## CONCLUSION

For the foregoing reasons, this petition should be granted and a writ of certiorari should be issued to review the decision below.

Respectfully submitted,

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*Attorney for Petitioner*,
Marshall Lee Frazier, Jr.

**APPENDIX A**

**CCRA No. 453-93**

**MARSHALL LEE FRAIZER, JR.**
*Appellant*

Appellant's **PETITION**

FOR DISCRETIONARY REVIEW

IS refused

6/15 1993

per curiam
JUDGE

## APPENDIX B

Judgment affirmed and Opinion filed March 4, 1993.

**In The**
**Court of Appeals**

**For The**

**First District of Texas**

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**NO. 01-92-00872-CR**

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MARSHALL LEE FRAZIER, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

---

**On Appeal from the County Criminal Court**
**at Law Number Five**
**Harris County, Texas**
**Trial Court Cause No. 9217723**

---

MAR 5 1993

## OPINION

A jury convicted appellant of resisting arrest and assessed punishment at a fine of 1,500 dollars, fully probated. We affirm.

In the light most favorable to the verdict, the facts show that on April 13, 1992, appellant and Antonio Garza were fighting one another in the basement of the Family Law Center in Houston. Houston Police Officer J. L. Reynolds saw the two men fighting. Appellant was facing Officer Reynolds as Reynolds approached. In uniform, Reynolds stepped between appellant and Garza, announced that he was a police officer, and told them to break up the fight. Garza stepped back, but appellant was angry and struggled to try to get past Officer Reynolds. In doing so, appellant grabbed and shoved Reynolds, so Reynolds arrested him. Reynolds told appellant he was under arrest, but appellant continued to struggle with him. The struggle continued, and appellant and Reynolds fell to the floor, causing bruises and torn ligaments in Reynolds' arm.

Deputy Constable Gilbert Reyna responded to the reported fight in the basement. Reyna arrived and saw appellant push Officer Reynolds, heard Reynolds tell appellant to calm down, and saw appellant push Reynolds again. Appellant struggled with Reynolds, and Reyna joined the struggle in order to help Reynolds arrest appellant. Appellant continued to fight even after Reyna intervened, and it took several minutes to handcuff him. Appellant testified he did not know the two were police officers until they handcuffed him, and he would not have struggled had he known they were police.

In his first point of error, appellant claims the resisting-arrest statute is unconstitutionally vague as applied to the facts of this case. *See* TEX. PENAL CODE ANN. § 38.03 (Vernon Supp. 1993).[1] Appellant argues that his arrest was unlawful and he should have been entitled to resist. Otherwise, appellant argues, a police officer could grab any citizen without cause, and when the citizen resists, charge him with resisting arrest. We disagree.

The facts show appellant assaulted Officer Reynolds before the officer made any attempt to arrest appellant. *See* TEX. PENAL CODE ANN. § 22.02(a)(2) (Vernon 1989). That assault triggered the arrest, and the arrest was lawful. TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (Vernon 1979).

Second, section 38.03(b) states, "It is no defense to prosecution under this section that the arrest or search was unlawful." TEX. PENAL CODE ANN. § 38.03(b) (Vernon 1989). "Under this section, the unlawfulness of the arrest or search is no defense, but if the peace officer (or another acting under his direction) initially used unnecessary force to effect the arrest or search, the actor is justified in responding with reasonable force under section 9.31. However, the place to challenge the lawfulness of an arrest is in the courtroom and not on the street." SEARCY AND

---

[1] The statute, in pertinent part, reads:

§38.03 Resisting Arrest, Search, or Transportation

(a) A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest, search, or transportation of the actor by using force against the police officer or another.

(b) It is no defense to prosecution under this section that the arrest or search was unlawful.

PATTERSON, PRACTICE COMMENTARY, TEX. PENAL CODE ANN. § 38.03 (Vernon 1989). Here, although appellant's arrest was legal, even if it had been illegal, appellant was not entitled to resist physically. There was no evidence Office Reynolds used unnecessary force to effect the arrest, and appellant never claimed he did.

We overrule point of error one.

In point of error two, appellant challenges the sufficiency of the evidence. In the light most favorable to the verdict, we must determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Villalon v. State*, 791 S.W.2d 130, 132-33 (Tex. Crim. App. 1990).

The elements of resisting arrest are: (1) a person; (2) intentionally; (3) prevents or obstructs a person he knows is a peace officer from effecting an arrest; (4) by using force against the police officer. *Jones v. State*, 606 S.W.2d 856, 858 (Tex. Crim. App. 1980); TEX. PENAL CODE ANN. § 38.03(a) (Vernon 1989).

The evidence showed that after the uniformed Reynolds identified himself as a police officer and told the men to stop fighting, appellant assaulted Reynolds. Reynolds arrested and attempted to subdue appellant for this assault. Appellant, however, continued to resist physically against two police officers. Thus, the evidence was sufficient to show appellant resisted arrest.

We overrule point of error two.

In point of error three, appellant claims the trial judge erred by admitting State's exhibits two, three, and four in

evidence. Those exhibits are pictures of Officer Reynolds' arm. Appellant claims the pictures were irrelevant because they depict the arm before the physical altercation with appellant.

When Reynolds identified the photographs, the testimony proceeded as follows:

> PROSECUTOR: Sir, I'm showing you what's been marked as State's Exhibits 2, 3, and 4. Do you recognize those pictures?
>
> REYNOLDS: Yes, I do.
>
> PROSECUTOR: What do they depict?
>
> REYNOLDS: They are photographs of my right arm preceding this incident.
>
> PROSECUTOR: And do they fairly and accurately represent the way your arm appeared the day of this event?
>
> REYNOLDS: Yes, they do.

Appellant objected that the testimony showed the pictures were taken before the accident and were irrelevant. The judge overruled the objection as premature, and allowed the prosecutor to continue to establish the predicate for the exhibits. The questioning resumed as follows:

> PROSECUTOR: What do they [exhibits four, five, and six] depict?
>
> REYNOLDS: They depict the -- my

right arm. That was taken after the arrest.

*PROSECUTOR:* *The arrest of the* defendant?

REYNOLDS: Yes.

Upon later questioning by appellant's counsel, Reynolds again testified that exhibits four, five, and six depicted injuries to his arm he received as a result of the struggle with appellant.

Despite Reynolds' first statement, the judge could have concluded that exhibits four, five, and six show injuries Reynolds received from the struggle with appellant, not preexisting injuries. Thus, the pictures were relevant, and the trial judge did not abuse her discretion. TEX. R. CRIM. EVID. 401.

We overrule point of error three.

In points of error four and five, appellant claims the judge erred by allowing the State to waive part or all of opening argument during the guilt-innocence and punishment phases of trial. Appellant cites no Texas case in support of his argument. Instead, appellant relies on authority from foreign jurisdictions.

In Texas, the Code of Criminal Procedure provides, "The order of argument may be regulated by the presiding judge; but the State's counsel shall have the right to make the concluding address to the jury." TEX. CODE CRIM. P. ANN. art. 36.07 (Vernon 1989). The Court of Criminal Appeals has held that the State is not required to open fully in its argument. *Granato v. State*, 493 S.W.2d 822, 826

(Tex. Crim. App. 1973). "The only mandatory portion of [article 36.07] is that the State has the right to close. All other matters as to the order of argument are left to the sound discretion of the court." *Id.*; *Martin v. State*, 623 S.W.2d 391, 396-97 (Tex. Crim. App. 1981); *Jones v. State*, 563 S.W.2d 599, 603 (Tex. Crim. App. 1978); *see also Nelson v. State*, 828 S.W.2d 185, 187 (Tex. App.--Houston [14th Dist.] 1992, pet. ref'd); *Webster v. State*, 627 S.W.2d 818, 819 (Tex. App.--Fort Worth), *pet. ref'd*, 634 S.W.2d 322 (Tex. Crim. App. 1982), *cert. denied*, 459 U.S. 1116 (1983). We hold there was no error.

We overrule points of error four and five.

The judgment is affirmed.

/s/ Murry B. Cohen
Murry B. Cohen
Justice

Chief Justice Oliver-Parrot and Justice Mirabal sitting.

Do not publish. TEX. R. APP. P. 90

Judgment rendered and opinion delivered MAR 04 1993
True Copy Attest:

/s/ Kathryn Cox
Kathryn Cox
Clerk of Court

## APPENDIX C

No. 9217723 JUDGMENT

THE STATE OF TEXAS VS.

Date: August 5 19 92

**Marshall Lee Frazier Jr.**

Attorney for State: Asst. Dist. Atty.: **C. Sandvick**

Attorney for Defendant: **B. Bradt**
[ ] Appointed [x] Retained

Waiver of Attorney [ ] The Defendant knowingly, intelligently and voluntarily waived the right to representation by counsel

Offense: **Resisting as charged in the information**

RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation, and/or alterations were present at the time of filming.

Plea to Offense: NOT GUILTY Plea to Enhancement:

Findings on Enhancement: The Defendant is the same person previously convicted
(Second Offender : of as alleged in the information.

Punishment : Fine of $ **1500.00** and **0** days confinement in the Harris County Jail probated for **one years**

**FINE AND COSTS TO BE PAID TO THE SHERIFF/THUR THE ADULT PROBATION DEPARTMENT AS FOLLOWS:**

COURT ORDERED FINE AND/OR COSTS PAYABLE ON OR BEFORE **7 day** of September 19 **92**

COURT ORDERED FINE AND/OR COSTS OF $
PAID AS FOLLOWS:

[ ] AT THE RATE OF $ PER MONTH, FIRST PAYMENT DUE AND ON THE SAME DAY OF EACH MONTH THEREAFTER UNTIL SATISFIED.

[ ] FINE IN THE AMOUNT OF $ DUE ON
AND COSTS IN THE AMOUNT OF $
DUE ON .

[ ] FINE IN THE AMOUNT OF $ AT THE RATE OF $ PER MONTH, BEGINNING
AND COURT COSTS IN THE AMOUNT OF $
AT THE RATE OF $ PER MONTH BEGINNING

[ ] FINE AND COSTS AT THE RATE OF $ ON OR BEFORE AND THE BALANCE OF $
ON OR BEFORE

[ ] ATTORNEY FEES IN THE AMOUNT OF $
AT THE RATE OF $ PER MONTH,
BEGINNING

IF SAID DEFENDANT SHOULD DEFAULT ON ANY PAYMENT AS OUTLINED, SAID DEFENDANT SHALL BE COMMITTED TO JAIL UNTIL REMAINING AMOUNT IS FULLY PAID.

Date of Offense: **4-13-92** Sentence to begin:
Credit **0** day(s) confinement in jail

The Defendant having been charged in the above entitled and numbered cause for the misdemeanor offense shown above, and this cause being this day called for trial, the State appeared by her District Attorney as named above and the Defendant named above, appeared in person and either by Counsel as shown above or waived counsel as indicated above, and both parties announced ready for trial. The said Defendant was arraigned, and in open court pleaded as indicated above to the charge contained in the information.

> Thereupon a Jury, composed of **Kevin P. Lynch** and five others was selected, impanelled, and sworn; and after having heard the information read, the Defendant's above indicated plea thereto, and the evidence submitted; and after having been charged by the Court as to their duty to determine the guilt of innocence of the Defendant; and after having heard the argument of counsel they retired in charge of the proper officer, and on **6** day of **August**, A.D. 19 **92**, returned into open court the following verdict, which was received by the Court and is here entered of record upon the minutes:

**We, the jury, find the defendant guilty as charged in the information.**

Thereupon, The Defendant requested that the Jury assess the punishment, and in accordance with law, after further evidence had been heard, and after having been again charged by the Court, and after having heard further argument of counsel, the Jury retired in charge of the proper officer, and on the **7** day of **August** , A.D. 19 **92**, returned into open court the following verdict, which was received by

the Court and is here entered of record upon the minutes: **We, the jury, assess punishment at $1500.00 probated for a period of one year.**

**/s/ Kevin P. Lynch**

It is therefore CONSIDERED, ORDERED, AND ADJUDGED by the Court that the Defendant is guilty of the offense indicated above, a misdemeanor, and that the said Defendant committed the said offense on the date indicated above and that he be punished as indicated above, and that the State of Texas do have and recover of the Defendant all costs of the prosecution , for which execution will issue.

And thereupon the said Defendant was asked by the Court whether he had anything to say why sentence should not be pronounced against him, and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of said Defendant, to pronounce sentence against him as follows, to wit: "It is the order of the Court that the Defendant (named above) who has been adjudged to be guilty of (offense named above) a misdemeanor, and whose punishment has been assessed at (indicated above) forthwith be committed to the custody of the Sheriff of Harris County, Texas, who shall confine him in the Harris County Jail for period indicated above and until the fine and costs are fully paid and satisfied in accordance with law.

And credit the defendant as indicated above.

**TO BE COMPLETED ONLY WHEN IMPOSITION OF SENTENCE SUSPENDED AND DEFENDANT GRANTED PROBATION.

[ x ] On this the **7** day of **August** , 19 **92** imposition of this sentence is suspended and defendant is placed on Misdemeanor Adult Probation for **one years** pending his

abiding by and not violating the following terms and conditions of probation, approved by this court and attached as a part of this judgment herewith.

PROBATION EXPIRES **8-6** 19 **93**

Signed and entered this the **7** day of **August** ,A.D., 19 **92.**

/s/ Hannah Chow
Judge, County Criminal Court at Law No. **5**
of Harris County, Texas

V O 6 4 6 P O 7 5 7

## APPENDIX D

APPELLATE COURT NO. 1 IN THE COURT OF CRIMINAL APPEAL IN THE STATE OF TEXAS AT AUSTIN_____

MARSHALL LEE FRAZIER, JR.
APPELLANT

VS.

THE STATE OF TEXAS
APPELLEE

---

TRIAL COURT NO. 9217723

APPEAL FROM COUNTY CRIMINAL COURT AT LAW NO. 5 OF HARRIS COUNTY, TEXAS
THE HONORABLE HANNAH CHOW PRESIDING

---

STATEMENT OF FACTS

Guilt/Innocence Phase

---

CAMILLE BRUESS
Official Court Reporter
County Criminal Court No. 5
Harris County, Texas

VOLUME 3 OF 5 VOLUMES

* * * * *

145 - 146

* * * * *

CLOSING ARGUMENTS

MS. SANDVICK: Ladies and gentlemen, it is now my opportunity to present a closing argument. I have the first opportunity to speak with you guys and then I'll have the last opportunity to speak with you also, and that because I carry the burden of proof in this case. Now, I want you to focus on the elements in this cause of action during defense counsel's closing argument. We're not here for an assault. We're here because of a resisting arrest against J. L. Reynolds. I'll be back to talk with you guys in a few minutes, but sit back and listen to the defendant and focus on those elements of resisting arrest that we talked about during voir dire.

THE COURT: Mr. Bradt.

MR. BRADT: Your Honor, I would ask that State fully open.

THE COURT: The Court's going to deny your request.

MR. BRADT: Judge, please note my exception.

## APPENDIX E

APPELLATE COURT NO. 1
IN THE COURT OF CRIMINAL APPEALS
IN THE STATE OF TEXAS AT AUSTIN

MARSHALL LEE FRAZIER, JR.
APPELLANT

VS.

THE STATE OF TEXAS
APPELLEE

---

TRIAL COURT NO. 9217723

APPEAL FROM COUNTY CRIMINAL COURT AT LAW NO. 5 OF HARRIS COUNTY, TEXAS

THE HONORABLE HANNAH CHOW PRESIDING JUDGE

---

**STATEMENT OF FACTS**

Punishment Phase

---

CAMILLE BRUESS
Official Court Reporter
County Criminal Court No. 5
Harris County, Texas

VOLUME 4 OF 5 VOLUMES

* * * * *

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* * * * *

(Whereupon, the charge was read.)

THE COURT: So if you'd like to proceed, Ms. Sandvick.

MS. SANDVICK: Your Honor, I waive my right to open and reserve my right to close.

THE COURT: Mr. Bradt.

MR. BRADT: Your Honor, I'm going to object to that, and I demand the State fully open.

THE COURT: Court's going to deny your request.

MR. BRADT: Then I rest.

THE COURT: Okay. Please, proceed.

MR. BRADT: Your Honor, I object to that because that is for rebuttal and I have not said anything. It is impermissible to allow her to rebutt (sic) when I have said nothing.

THE COURT: Court's denying your request. Overruled.

MR. BRADT: Please, note my exception on the Rule and I move for a directed verdict because State's not permitted me to open.

THE COURT: Overruled.

MR. BRADT: Please note my exception.

## APPENDIX F

## FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## APPENDIX G

## SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

## APPENDIX H

## FOURTEENTH AMENDMENT

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

# APPENDIX I

## ARTICLE 36.07, CODE OF CRIMINAL PROCEDURE, V.T.C.A.

ORDER OF ARGUMENT - The order of argument may be regulated by the presiding judge; but the State's counsel shall have the right to make the concluding address to the jury.